IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 322 of 2002

in

OFFICIAL LIQUDATOR REPORTNo 16 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S.BRAMHANI TEXTILES (NOMINEE OF BALAJI CORPORATION
Versus
O.L.OF MARSDEN MILLS UNIT OF GSTC LTD.

Appearance:
1. COMPANY APPLICATION No. 322 of 2002
MR BHARAT T RAO for Petitioner No. 1
OFFICIAL LIQUIDATOR for Respondent No. 1
DS AFF.NOT FILED (N) for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 21/02/2003

ORAL JUDGEMENT

Rule. Service of rule is waived by Shri M.P. Shah, Dy. Official Liquidator. At the request of learned advocate Shri B.T. Rao as well as the Dy. Official Liquidator, the application is finally heard today.

2. In this application, the applicant, who is a purchaser of coal-ash, has prayed that the applicant be granted time up to 31st August 2003 for removal of coal-ash, which the applicant had purchased from the Official Liquidator of Marsden Mills, a unit of GSTC Ltd.(in liquidation and hereinafter referred to as 'the company').

3. Learned advocate Shri Rao appearing for the applicant has submitted that the order, whereby the sale was confirmed in favour of the applicant, was passed on 8th July 2002. However, intimation with regard to the said order was given to the applicant late. It has been also submitted by him that the applicant was not heard when the said order dated 8th July 2002 confirming the sale in favour of the applicant was passed. According to him, possession of the plot was given to the applicant on 30th August 2002. In the circumstances, the applicant should have been given at least 3 months time from 1st September 2002 for the purpose of removal of the coal-ash.

4. The learned advocate has further submitted that due to passage of time, the coal-ash has become very hard and, therefore, the process of excavating the coal-ash has become more time-consuming. It has been also submitted by him that the applicant is ready and willing to pay additional amount by way of rent to the Official Liquidator if further time is granted for the purpose of removal of coal-ash from the land in question.

5. On the other hand, Dy. Official Liquidator Shri M.P. Shah has submitted that sufficient time was granted to the applicant. However, the applicant has caused delay in excavating and removing the coal-ash from the land in question. He has, however, submitted that if further time is granted to the applicant, substantial amount should be recovered from the applicant by way of rent.

6. I have heard the learned advocate as well as the Dy. Official Liquidator. It is not in dispute that possession of land was given to the applicant on 30th

August 2002 though the order confirming the sale was passed on 8th July 2002. It is not in dispute that at the time when the order confirming the sale was passed, the applicant was not present as he was not a party to the the O.L. Report.

7. Looking to the facts of the case, the applicant is permitted to retain possession of the land in question for the purpose of removal of coal-ash upto 31.5.2003 on a condition that the applicant pays a lumpsum amount of Rs. 50,000/- by way of rent to the Official Liquidator. The applicant has already paid a sum of Rs. 25,000/- to the Official Liquidator and, therefore, the remaining amount of Rs. 25,000/- shall be paid by the applicant. Upon payment of the said amount, the applicant shall be permitted to take the coal-ash out of the premises of the company. It is, however, clarified that even if the said amount is not paid, the applicant shall be permitted to excavate the coal-ash. However, he would not be permitted to take the coal-ash out of the premises. Only upon payment of the remaining amount, the applicant shall be permitted to remove the coal-ash out of the premises of the company.

8. In view of the above order, the application stands disposed of as granted. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

(hn)